

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
New York Senate 2000 and Andrew Grossman, in ) MUR 5225  
his official capacity as treasurer )  
4

5 **GENERAL COUNSEL'S BRIEF**

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8 **I. INTRODUCTION<sup>1</sup>**

9 This matter stems from a complaint filed by Peter F. Paul, who alleged that he spent well  
10 over \$1 million for an August 12, 2000 joint fundraising event – billed as “The Hollywood Gala  
11 Salute to President William Jefferson Clinton and Hillary Rodham Clinton” – and that New York  
12 Senate 2000 (“NYS 2000”), the joint fundraising committee, failed to properly report his in-kind  
13 contributions.<sup>2</sup> On February 3, 2004, the Commission found reason to believe that NYS 2000  
14 violated 2 U.S.C. § 434(b) by failing to report over \$600,000 in in-kind contributions from  
15 accounts controlled by Paul. In connection with the same contributions, the Commission also  
16 found reason to believe NYS 2000 violated 11 C.F.R. § 102.17(c)(8)(i)(A) by failing to report the  
17 contributions as memo entries in its disclosure reports.

18 The investigation has shown that the true costs of the event exceeded \$1.2 million;  
19 however, NYS 2000 reported total event costs of only \$519,077. The investigation also revealed  
20 that the event raised \$1,072,015 in direct contributions (i.e., checks written directly to NYS 2000  
21 in response to event solicitations, all of which were reported) and over \$1.1 million in in-kind

<sup>1</sup> The activities that are the subject of this matter occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub L 107-155, 116 Stat 81 (2002). Therefore, all references to statutes and regulations pertain to those that were in effect prior to the implementation of BCRA.

<sup>2</sup> On March 8, 2005, Peter Paul pleaded guilty to federal stock fraud charges in the Eastern District of New York in connection with his holdings of Stan Lee Media stock (including, *inter alia*, charges that he misrepresented the company's stock value), and is currently awaiting sentencing. This Brief relies on Paul's account only to the extent that it is corroborated by other sources.

contributions. NYS 2000, however, failed to disclose \$721,895 in in-kind contributions as summarized below:<sup>3</sup>

DESCRIPTION	REPORTED	UNREPORTED
Dinner and Reception In-kinds	\$153,863	\$109,067
Concert In-Kinds (minus \$100,000 included in reported Direct Expenses of \$117,658)	\$200,000	\$395,154
Travel and Lodging In-kinds		\$92,135
Printing In-kinds	\$12,702	\$125,539
Other In-kinds reported	\$34,854	
Direct Expenses reported	\$117,658	
Totals	\$519,077	\$721,895

Total Event Costs: \$1,240,972

As discussed *infra*, the event was conceived, planned and conducted over the course of only a couple of months. Event costs appear to have rapidly escalated from initial projections; however, NYS 2000 does not appear to have carefully tracked them to ensure they would be accurately reported, resulting in the underreporting of over half of its total expenses. NYS 2000 appears to either have been aware of substantial unreported costs or shielded itself from readily available cost information.

Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that NYS 2000 violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.17(c)(8)(i)(A).

<sup>3</sup> The facts discussed herein are based on publicly available information, documents produced to the Commission and interviews and depositions conducted by OGC staff. Documents produced by NYS 2000 are referenced by Bates number. The page numbers of trial and deposition testimony transcripts are footnoted where appropriate. The trial testimony is from *United States v. David Rosen*, No. CR03-1219-AHM (C.D. Cal.), which is discussed further in Section II.A below.

## II. SUMMARY OF FACTS

### A. NYS 2000 and its Principals

NYS 2000 was one of several joint fundraising committees consisting of partnerships between the Democratic Senatorial Campaign Committee ("DSCC") and U.S. Senate candidates, and sometimes with the respective state party committees. For the August 12, 2000 event, the participating committees included Hillary Rodham Clinton for U.S. Senate Committee, Inc. ("Clinton for Senate"), the DSCC and the New York State Democratic Committee ("NYSDC"). A "Joint Fundraising Agreement" produced by NYS 2000 provided the following distribution formula for funds received, which was also set forth in the solicitations for the event:

- Of contributions from persons, Clinton for Senate was to receive up to the first \$2,000 of each contribution (primary and general elections). Of the remainder, the DSCC would receive up to the first \$20,000 and the NYSDC would receive up to the next \$3,000.
- Of contributions from multi-candidate committees, Clinton for Senate was to receive up to the first \$10,000 of each contribution (primary and general elections). Of the remainder, the DSCC would receive up to the first \$15,000 and the NYSDC (federal account) would receive up to the next \$5,000.
- Any portion of federal contributions beyond the contributor's limits for direct contributions to the participating committees would be allocated to the DSCC's non-federal account.
- All non-federal contributions would be allocated to the DSCC's non-federal account.

Andrew Grossman, then-Deputy Executive Director of the DSCC, served as treasurer for NYS 2000, and Whitney Burns was NYS 2000's compliance consultant, who prepared the FEC disclosure reports for the joint fundraising committee.<sup>4</sup> David Rosen, an experienced political fundraiser and National Finance Director for the Clinton campaign, organized most of NYS 2000's events and maintained an office and staff specifically for this purpose. Around the time of the

<sup>4</sup> See Whitney Burns testimony, Rosen Trial Transcript at 102 (May 19, 2005).

1 fundraising event at issue, designated in NYS 2000's disclosure reports as "Event 39," the majority  
2 of Rosen's salary was being paid by NYS 2000, while the rest was paid by Clinton for Senate. In  
3 his capacity as "lead" fundraiser for Event 39, Rosen was authorized to raise funds and to  
4 "supervise" the event for NYS 2000.<sup>5</sup> According to NYS 2000's treasurer and other witnesses, it  
5 was Rosen's express duty to collect contribution and expense information for the disclosure  
6 reports, specifically in connection with the August 12, 2000 event.<sup>6</sup> Rosen testified that he was  
7 aware that NYS 2000 had an obligation to report all contributions, including soft money and in-  
8 kind donations.<sup>7</sup>

9 On May 27, 2005, following a jury trial in the Central District of California, Rosen was  
10 acquitted of two counts of causing false campaign finance reports to be filed with the FEC in  
11 connection with the August 12, 2000 event. One count related to the filing of NYS 2000's October  
12 Quarterly Report on October 15, 2000; the other count was based on the filing of an amended  
13 October Quarterly Report filed on January 30, 2001. Two other counts of the four-count  
14 indictment were dismissed by the trial judge: One involved statements made by NYS 2000 in a  
15 July 30, 2001 letter in response to a Commission Request for Additional Information, while the  
16 other involved an invoice with false information received by NYS 2000 from one of the event  
17 vendors.<sup>8</sup>

<sup>5</sup> See David Rosen testimony, Rosen Trial Transcript at 114, 207-08 (May 24, 2005)

<sup>6</sup> See, e.g., Andrew Grossman Deposition Transcript at 127-29, Andrew Grossman testimony, Rosen Trial Transcript at 102-14 (May 12, 2005); James Levin testimony, Rosen Trial Transcript at 134 (May 12, 2005). On May 9, 2005, Levin pleaded guilty to federal bribery, fraud and conspiracy charges in connection with the awarding of public contracts to his family's fencing company in Chicago. He is currently awaiting sentencing. As part of his plea deal, he agreed to provide truthful testimony at Rosen's trial. See James Levin testimony, Rosen Trial Transcript at 186 (May 12, 2005).

<sup>7</sup> See David Rosen testimony, Rosen Trial Transcript at 209-10 (May 24, 2005)

<sup>8</sup> Rosen testified at the trial, but refused to provide testimony to the Commission based on his Fifth Amendment privilege against self-incrimination. Several witnesses who testified at the trial also provided testimony or interviews (Footnote continues on following page)

**B. The Joint Fundraising Event: Event 39**

Event 39 was "the marquee event" of the 2000 Democratic National Convention in Los Angeles, according to NYS 2000 treasurer Andrew Grossman.<sup>9</sup> The idea for the event, however, was developed only about two months earlier. Terri New, who had served as a fundraising consultant on previous NYS 2000 and Clinton campaign events, recalled a meeting at Peter Paul's house two months prior to the event, during which she and Rosen discussed with Paul a fundraiser for Hillary Clinton's campaign that would include a large concert with many celebrities. At that time Paul served as a consultant to Stan Lee Media, Inc. ("Stan Lee Media") and controlled various corporate entities and accounts that held shares of Stan Lee Media stock. Paul claimed that his primary objective was to enlist then-President Clinton to work for Stan Lee Media after his term in office.<sup>10</sup> According to New, Rosen advised at that meeting that NYS 2000 rather than Clinton for Senate should hold the event, in light of the opportunities for stepped-up contribution limits and larger in-kind contributions.

In early July 2000, the fundraising event – including a cocktail reception, a benefit concert, a dinner, and tribute journal – was conceptualized as a "Hollywood Gala Salute" to the President

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to Commission staff

Also, our recommendation in this Brief relies on information supplied by a number of other individuals who were *not* called to testify at the trial. While the conduct at issue in this Brief overlaps substantially with that involved in the criminal trial, the government in the criminal trial had to show that Rosen had acted knowingly and willfully, we are not proposing to recommend that the Commission find probable cause to believe as to Rosen, who notwithstanding his involvement in the underlying activities, is not liable under the applicable provisions of the Act. We are also not making knowing and willful recommendations in this Brief; instead, we intend to recommend that the Commission find probable cause to believe as to NYS 2000, which as explained more fully *infra*, failed to report over \$700,000 of in-kind contributions in connection with the August 12, 2000 event.

<sup>9</sup> See Andrew Grossman Deposition Transcript at 27.

<sup>10</sup> At least two witnesses stated in interviews that they understood from Paul that he wanted former President Clinton to associate himself with Stan Lee Media. However, aside from assertions by Paul, we have no evidence that Paul's interests were ever communicated to the former President.

1 and Hillary Clinton.<sup>11</sup> The event was funded primarily through corporate entities controlled by  
2 Peter Paul, with promoter Aaron Tonken assisting with procuring and paying for some of the  
3 vendors using an account funded by shares of Stan Lee Media stock.<sup>12</sup> Paul and Tonken wrote  
4 numerous checks to vendors that worked on the event; Stan Lee Media itself does not appear to  
5 have paid for any event costs, but did make a \$100,000 contribution to NYS 2000's non-federal  
6 account that was later reimbursed to the company by one of Paul's entities.<sup>13</sup> During the planning  
7 and execution of the event, the expenses borne by entities or accounts controlled by Paul steadily  
8 increased, ultimately paying for most of the final \$1.2 million total.

9 NYS 2000 hired well-known producer Gary Smith to put on what he described as a "first  
10 class production." Smith used a production company called Black Ink Productions ("Black Ink")  
11 as the primary vendor, which in turn secured numerous sub-vendors to design and build the stage,  
12 sound and video systems. On July 9, 2000, Tonken and Smith met to discuss the logistics of the  
13 event with the production staff, including consultant Terri New.<sup>14</sup> Although Rosen did not attend  
14 that meeting, he appears to have participated in a conference call two days later that included  
15 Tonken, Smith, New and other production staff. A detailed outline of the July 11, 2000 conference  
16 call obtained from Joan Yarcusko, Tonken's assistant, indicates that discussion topics included the

<sup>11</sup> According to invitations approved by NYS 2000, in exchange for a \$25,000 contribution, the contributor would receive "[t]wo tickets to the cocktail reception and benefit concert featuring special guest performances and spectacular entertainment," "[t]wo invitations for seating at the exclusive Dinner," and a "[f]ull page in the special Tribute Journal." For a \$1,000 contribution, the contributor would receive "[o]ne ticket to the cocktail reception and to the benefit concert . . ." and for a \$5,000 donation, the contributor would receive a "full page in the Tribute Journal." The Tribute Journal contained color photos of the event, focusing on the former President and Ms. Clinton, and included photos and tribute messages from some of the contributors, entertainers and vendors.

<sup>12</sup> On August 23, 2004, Tonken was sentenced to five years in federal prison after pleading guilty to defrauding donors and underwriters of charity galas he organized in 2000 and 2001.

<sup>13</sup> It appears that Stan Lee Media also provided office space and equipment to NYS 2000, such as when Rosen worked on the event there during the few weeks prior to the event.

<sup>14</sup> See, e.g., Patricia Waters Deposition Transcript at 26-46.

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1 printing and mailing of event invitations, the location of the event, the entertainment program and  
2 the event budget. The last entry in the outline states that the "Approval process" was to be  
3 "centralized through Rosen." Yarcusko indicated in an interview that she believed New (who was  
4 assisting Rosen as a fundraising consultant during the planning phase) had prepared the outline in  
5 advance of the call, and recalled that Rosen and New moderated the discussion. Yarcusko wrote  
6 on her copy "Keep Track - Document filed w/FEC" during the discussion; she explained that  
7 Rosen stated that the cost of the event had to be reported to the FEC.

8 Rosen was based primarily in Los Angeles from approximately mid-July 2000 through the  
9 August 12 event, overseeing the planning of various parts of the event out of an office at Stan Lee  
10 Media with the assistance of other NYS 2000 staff.<sup>15</sup> His activities, according to various witnesses  
11 and documents obtained from Rosen, included approving mailing lists, authorizing event  
12 invitations, approving talent letters, conducting walk-throughs at the event location and approving  
13 the seating arrangements.

14 The extensive concert preparations included the hiring of a professional stage designer, a  
15 large orchestra, a gospel choir (including a charter bus), and numerous talent assistants, make-up  
16 and hair artists, audio technicians, camera and video technicians, key grips, prop technicians,  
17 electricians and security personnel. Black Ink shipped in hundreds of trees and bushes, rented  
18 sophisticated lighting, sound and video equipment, and used large generators to power the system.  
19 Publicists were also hired at a cost of over \$22,000 to advertise the concert and the celebrities who  
20 would be attending.

<sup>15</sup> See, e.g., *id.* at 110-12; Chris Fickes testimony, Rosen Trial Transcript at 58 (May 17, 2005), David Rosen testimony, Rosen Trial Transcript at 132, 145 (May 24, 2005) and 31-32 (May 25, 2005)

1 Most of these concert-related expenses were never disclosed by NYS 2000. The concert  
2 itself, exclusive of the performers' travel, lodging and band expenses, cost approximately  
3 \$700,000; NYS 2000 failed to disclose over half of that amount. Specifically, the invitations and  
4 the Tribute Journal (copies of which were given to all event attendees) cost over \$125,000;  
5 however, NYS 2000 reported only \$12,702 of this amount, failing to disclose any of the \$31,284 in  
6 printing expenses associated with the Journal. All guests also received gift bags containing CDs  
7 (compact discs) of the entertainers who performed at the concert. Although NYS 2000 reported  
8 the cost of 1,400 gift bags (\$1,535), it failed to report any costs associated with more than 7,000  
9 CDs included in the bags. Similarly, the cost for publicists to advertise the event were also not  
10 reported.

11 Following the concert, Spago Restaurant provided dinner at a price of approximately  
12 \$70,000, personally catered by chef Wolfgang Puck. The dinner finally concluded well after  
13 midnight, resulting in several thousand dollars of overtime costs for bartenders, butlers, parking  
14 attendants and numerous other support staff. Unlike the concert, most of the dinner expenses were  
15 reported by NYS 2000.

16 **III. LEGAL ANALYSIS: NYS 2000 FAILED TO ACCURATELY DISCLOSE IN-KIND**  
17 **CONTRIBUTIONS FOR THE EVENT**  
18

19 The Act and Commission regulations require all committees, including joint fundraising  
20 committees such as NYS 2000, to report all contributions, including in-kind contributions. *See*  
21 2 U.S.C. § 434(b); 11 C.F.R. § 104.13. Joint fundraising committees are responsible for collecting  
22 contributions, paying fundraising costs, distributing the proceeds, maintaining records and properly  
23 disclosing contributions and expenses. 11 C.F.R. § 102.17(b) and (c). Joint fundraising  
24 representatives such as NYS 2000 must report all funds received and all disbursements made in the  
25 reporting period in which they are received and made, respectively. 11 C.F.R. § 102.17(c)(8). The

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1 representative shall report "the total amount of contributions received from prohibited sources  
2 during the reporting period, if any, as a memo entry." 11 C.F.R. § 102.17(c)(8)(i)(A). The  
3 evidence shows that NYS 2000 failed to fully disclose over \$700,000 in in-kind contributions  
4 associated with the joint fundraising event. See 11 C.F.R. § 102.17(c).

5 According to compliance consultant Whitney Burns, the in-kind figures in NYS 2000's  
6 reports were based largely on budget spreadsheets provided to her by either Rosen or Bretta Nock,  
7 an event planner who had worked with Aaron Tonken on previous fundraising events and was  
8 brought in by him to work on Event 39.<sup>16</sup> Nock, who was paid with checks from Paul's corporate  
9 entities (i.e., in the same manner as other vendors), testified that she worked on the reception and  
10 dinner portions of the event, dealing with Rosen on a daily basis.<sup>17</sup> Although not employed by  
11 NYS 2000, Nock appears to have assisted Rosen on a number of event issues, such as the  
12 invitations, the Tribute Journal, the décor and the parking. She appears to have created a budget  
13 document for the event based on a template she had used for other events, providing copies of  
14 preliminary and final budget documents to NYS 2000 at the Committee's request.<sup>18</sup>

15 Whitney Burns kept the budget spreadsheets and other documents related to the event, such  
16 as vendor invoices and contributor information, in her files at DSCC headquarters in Washington,  
17 D.C. After receiving the final budget and supporting documents, Burns prepared and filed the  
18 disclosure reports at issue. Although there appears to be conflicting testimony about the extent to  
19 which Rosen deferred to Nock for the accuracy of the budget figures, the evidence shows that  
20 NYS 2000 was aware that the in-kinds were far in excess of what appeared on its reports.

<sup>16</sup> See, e.g., Whitney Burns testimony, Rosen Trial Transcript at 122 (May 19, 2005)

<sup>17</sup> See Bretta Nock testimony, Rosen Trial Transcript at 109-10 (May 18, 2005)

<sup>18</sup> See *id.* at 106-11, 130 (May 18, 2005)

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**A. NYS 2000 Underreported Concert Production Expenses**

NYS 2000 disclosed \$300,000 in expenses associated with concert production, comprised of a \$100,000 disbursement to Black Ink from NYS 2000 and a \$200,000 in-kind reported from Stan Lee Media (as stated *supra*, Black Ink was the primary concert vendor used by producer Gary Smith). However, NYS 2000 failed to disclose approximately \$400,000 in additional concert in-kinds. Although David Rosen claimed not to have been aware of the actual concert costs, several witnesses recall conversations with Rosen in which figures were discussed that were far higher than what was reported.

Patricia Waters, the printing contractor for the event, testified that she, Rosen, Paul, New, talent coordinator Blossette Kitson and other production staff attended a July 16, 2000 meeting at Paul's Los Angeles home in which Paul stated that the event "would cost somewhere around \$500,000, and that Gary Smith's [concert production] fee alone was eating up all of that . . . ."<sup>19</sup> Waters testified that Paul complained that the initial \$500,000 budget "was already blown" because of Smith's expenses.<sup>20</sup> Kitson testified that during the same meeting, she also recalled Paul complaining about concert costs in Rosen's presence.<sup>21</sup>

Bretta Nock also testified that Rosen often complained about concert costs, referring to specific dollar figures in connection with the concert:

Q: What do you recall Mr. Rosen telling you about Mr. Smith's fees?

A: They were exorbitant.

Q: Do you recall hearing him discuss what he understood those fees to be? How much?

<sup>19</sup> See Patricia Waters testimony, Rosen Trial Transcript at 28-30 (May 18, 2005) Rosen testified that he traveled to Los Angeles around July 15, 2000, and recalled attending a meeting at Peter Paul's house around that time See David Rosen testimony, Rosen Trial Transcript at 132-36 (May 24, 2005)

<sup>20</sup> See Patricia Waters testimony, Rosen Trial Transcript at 28-30 (May 18, 2005).

<sup>21</sup> See Blossette Kitson testimony, Rosen Trial Transcript at 85-86 (May 18, 2005)

1 A: In excess of \$600,000, I believe, was the figure.<sup>22</sup>

2  
3 Rosen denied that he made any such statements to Nock or to anyone else.<sup>23</sup>

4  
5 Similarly, Raymond Reggie, who had worked on previous NYS 2000 events and assisted  
6 Rosen in connection with Event 39, indicated that Rosen was aware the costs exceeded the figure  
7 reported by NYS 2000. Specifically, Reggie testified that Rosen complained a few days before the  
8 event that Smith "is charging us over half a million or half a million dollars to produce this  
9 event."<sup>24</sup>

10 James Levin, who had worked on previous NYS 2000 events and served as President  
11 Clinton's liaison at Event 39, also testified as to Rosen's knowledge of high concert expenses:

12 Q: And was there a number being discussed by Mr. Rosen as to how much the  
13 [concert] fee was?

14 A: The number was very excessive, and I – I am not certain of the number.

15 Q: Do you remember the range?

16 A: Yes.

17 Q: What was the range?

18 A: It was \$800- to \$900,000.<sup>25</sup>

19 These witness accounts suggest that NYS 2000, through Rosen, was aware that the concert  
20 portion cost at least \$500,000 and perhaps much more – substantially higher than the \$300,000  
21 reported by NYS 2000.

22 In addition, a \$200,000 false invoice was created by Allan Baumrucker, Black Ink's  
23 president, in connection with the in-kind portion of the concert figure, and used by Whitney Burns

<sup>22</sup> See Bretta Nock testimony, Rosen Trial Transcript at 132 (May 18, 2005)

<sup>23</sup> See David Rosen testimony, Rosen Trial Transcript at 161 (May 24, 2005)

<sup>24</sup> See Raymond Reggie testimony, Rosen Trial Transcript at 66 (May 19, 2005) In April 2005, Reggie pleaded guilty to two bank fraud charges in connection with his Louisiana advertising firm and is awaiting sentencing. As part of his plea deal, he agreed to provide truthful testimony at Rosen's trial

<sup>25</sup> See James Levin testimony, Rosen Trial Transcript at 156-57 (May 12, 2005)

1 to support NYS 2000's underreported concert amount. Burns stated that, after she reviewed the  
2 \$200,000 in-kind figure in the budget spreadsheet, she asked Rosen for documentary support.  
3 Nock testified that Rosen had asked her "to call Black Ink Productions and obtain that invoice"<sup>26</sup>  
4 Baumrucker testified that Nock told him that the invoice was needed to cover "lost receipts"<sup>27</sup>  
5 Baumrucker admitted that the invoice did not accurately reflect Black Ink's costs, he explained  
6 that he had no "good answer" for why he created it.<sup>28</sup> Rosen testified that he could not recall such  
7 a document.<sup>29</sup> In any case, NYS 2000's failure to collect and report actual concert in-kinds  
8 appears to have resulted in the creation of the false invoice.

9 **B. NYS 2000 Failed to Report Other Event Expenses**

10 In addition to the concert costs, NYS 2000 failed to disclose significant other costs  
11 associated with the August 12, 2000 event.

12 **1. NYS 2000 Omitted Printing Expenses From Its Disclosure Reports**

13 NYS 2000's disclosure reports failed to include roughly 90% of costs associated with  
14 printing the invitations and the Tribute Journal. A preliminary budget document obtained from  
15 NYS 2000 listed the following items associated with the event invitations and the Tribute Journal:  
16 "Invitations/Printing/House of Graphics/\$20,000" and "Tribute Journal/Printing and  
17 Product./House of Graphics/\$20,000."<sup>30</sup> NYS 2000's final budget document, however, listed  
18 expenses of only \$12,702 (for design, postage and messenger service), a far lower figure than the

<sup>26</sup> See Brett Nock testimony, Rosen Trial Transcript at 136 (May 18, 2005)

<sup>27</sup> See Allan Baumrucker testimony, Rosen Trial Transcript at 130 (May 17, 2005)

<sup>28</sup> *Id.* at 131.

<sup>29</sup> See David Rosen testimony, Rosen Trial Transcript at 178 (May 24, 2005)

<sup>30</sup> See NYS 2000 documents, NYS2K0041346 ("Preliminary Budget")

1 \$125,000 in actual printing costs associated with the event. The evidence indicates that NYS 2000  
2 was aware of substantial unreported printing costs.

3 Bretta Nock stated in an interview that Rosen was aware there were substantial costs for the  
4 design, printing and mailing of the invitations, as well as for the design, printing and binding costs  
5 of the Tribute Journal. Her assertions that Rosen was aware of printing costs are supported by the  
6 deposition testimony of Waters (the printing contractor) and the accounts of other witnesses.<sup>31</sup>

7 Waters testified that Rosen personally reviewed and signed off on all components of the event  
8 invitations.<sup>32</sup> And Blossette Kitson testified that she recalled Paul complaining about the  
9 "exorbitant" cost of the invitations in Rosen's presence.<sup>33</sup> James Levin also testified that Rosen  
10 was "upset" about the costs associated with the Tribute Journal because they were "excessive."<sup>34</sup>

11 While Rosen admitted that he signed off on every page of the invitations and knew that  
12 Tribute Journals were being given to all event attendees, he claimed that he did not know the scope  
13 of these costs.<sup>35</sup> Even if precise figures for printing costs were not discussed by Rosen or others in  
14 Rosen's presence, in light of the testimony of others about discussions of "exorbitant" or  
15 "excessive" printing costs and his close monitoring of the printing process, it appears likely that  
16 NYS 2000, through Rosen, would have been aware that such costs substantially exceeded the  
17 reported \$13,000. At the very least, NYS 2000 had access to all invoices and other information  
18 from which it could collect and report the actual printing costs. There is no evidence that the

<sup>31</sup> See, e.g., Patricia Waters Deposition Transcript at 183

<sup>32</sup> *Id.* at 65, 69, 89, 94-95, 125, 129, 153, 157, 166, 188

<sup>33</sup> See Blossette Kitson testimony, Rosen Trial Transcript at 85-86 (May 18, 2005)

<sup>34</sup> See James Levin testimony, Rosen Trial Transcript at 171 (May 12, 2005)

<sup>35</sup> See David Rosen testimony, Rosen Trial Transcript at 67-70, 85-86 (May 25, 2005)

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1 printing contractor or others attempted to prevent NYS 2000 from collecting such information  
2 Accordingly, NYS 2000 failed to disclose over \$100,000 in printing costs.

3 2. NYS 2000 Omitted Travel and Lodging Expenses

4 The evidence indicates that, although the concert performers appear to have donated their  
5 time for their performances, their travel and lodging costs were paid for primarily by checks from  
6 Aaron Tonken, written on accounts funded by Peter Paul's corporate entities. The final budget did  
7 not list any such items related to travel and lodging costs for performers, even though the Peter  
8 Paul entities paid for at least \$90,000 in such costs.

9 Levin described Rosen's close involvement and reaction to these expense items:

10 Q: Do you remember a discussion with David Rosen when David Rosen was present  
11 regarding the costs associated with flying in Cher?

12 A: There was a conversation. I don't recall the cost.

13 Q: But do you recall a conversation regarding the cost associated with her, regardless of the  
14 number?

15 A: I remember the demands, yes.

16 Q: What do you recall the demands being?

17 A: Demands were that she wanted a certain type of airplane; that she wanted certain things;  
18 that she was very demanding and wanted – she was very diva like in her – they weren't  
19 requests, they were demands.

20 Q: And who was trying to deal with those demands?

21 A: Both Aaron and David.

22 Q: And on some occasions or on this occasion, in particular, in dealing with the costs  
23 bringing in the talent, do you recall an occasion where Aaron Tonken was complaining to  
24 David Rosen about these costs?

25 A: Yes, many times.

26 . . . .

27 Q: And what do you recall David Rosen's reaction to Aaron Tonken's complaints about the  
28 costs?

29 . . . .

30 A: Everything from ["shut up and leave me alone"] to throwing arms up in disgust to  
31 ["I don't want to hear it anymore"] and ["just figure it out"]<sup>36</sup>  
32

<sup>36</sup> See James Levin testimony, Rosen Trial Transcript at 169-70 (May 12, 2005)

1 After Whitney Burns received the preliminary budget from Rosen in early August 2000, he  
2 told her that additional costs were anticipated for Cher's band and perhaps other bands – a note  
3 written by Burns on the document right after she received it attests to such a discussion (“+Cher’s  
4 band exp. & someone else’s band exp.”)<sup>37</sup> Burns testified that, shortly thereafter, Rosen informed  
5 her that Cher was not going to perform after all; hence, there was no need for Burns to track Cher’s  
6 expenses.<sup>38</sup>

7 As Rosen was aware (since he attended the event), and as captured on videotapes, Cher  
8 performed at the event. The evidence suggests Rosen was likely aware or shielded himself from  
9 becoming aware of her travel expenses – invoices and checks obtained from the travel vendor show  
10 that Cher was flown by chartered jet to Los Angeles along with the band Sugar Ray at a cost of over  
11 \$30,000. Rosen testified that he told Burns that “Cher wanted to bring her band and then she didn’t.  
12 And I told her that Cher’s band had dropped out.”<sup>39</sup> Nevertheless, it is undisputed that Cher  
13 performed and that her transportation expenses were not disclosed by NYS 2000.

14 The evidence indicates that Rosen either had knowledge of substantial travel expenses or  
15 failed to gather available cost information; there is no evidence that NYS 2000 was denied access to  
16 this information. Accordingly, NYS 2000 failed to disclose over \$90,000 in in-kinds associated with  
17 travel and lodging.

18 3. NYS 2000 Omitted Other Items From Its Disclosure Reports

19 As indicated in the table of expenses, *see supra* at 2, NYS 2000 failed to disclose over  
20 \$100,000 in dinner and reception costs, which included such items as lighting, chair fabric and gift

<sup>37</sup> See Whitney Burns testimony, Rosen Trial Transcript at 117 (May 19, 2005), David Rosen testimony, Rosen Trial Transcript at 196 (May 24, 2005), NYS 2000 documents, NYS2K0041346 (“Preliminary Budget”)

<sup>38</sup> See Whitney Burns testimony, Rosen Trial Transcript at 121 (May 19, 2005)

<sup>39</sup> See David Rosen testimony, Rosen Trial Transcript at 196 (May 24, 2005)

1 CDs. For example, as noted *supra*, NYS 2000 reported the cost of 1,400 gift bags (\$1,535) but  
2 failed to report any costs associated with more than 7,000 CDs included in those bags. Rosen  
3 admitted that the boxes containing these CDs were stored at his office at Stan Lee Media, and that  
4 gift bags containing multiple CDs were given out to guests at the event.<sup>40</sup> Rosen claimed,  
5 however, that he did not know about such costs and that it was not his responsibility to find out:

6 Q: Is it your testimony that the boxes of CDs that came out of the office that you were  
7 working in . . . and were given out to the guests at the Gala were the responsibility of Bretta  
8 Nock to find out – it was her responsibility to find out what those costs were?

9 A: Absolutely.

10 Q: And not yours?

11 A: Yes, sir.<sup>41</sup>

12  
13 If Rosen had reviewed the budget documents made available to him by Nock, he would  
14 have observed that the gift CDs and other dinner and reception items were not included in budget  
15 documents passed on to Whitney Burns and used by NYS 2000 to file inaccurate disclosure  
16 reports. Also, there is no evidence that this expense information was hidden or that NYS 2000 was  
17 prevented from obtaining it. Accordingly, NYS 2000 failed to report substantial dinner and  
18 reception expenses associated with the event.

19 **C. Other Evidence Indicating that NYS 2000 Knew that the Overall Costs Related to**  
20 **the Event were Inaccurately Disclosed**

21  
22 Although not essential to establish that NYS 2000 failed to report a substantial amount of  
23 in-kind contributions, there are various detailed accounts from the Rosen trial and Commission  
24 interviews in which several witnesses consistently maintain that David Rosen was aware that  
25 overall costs were skyrocketing well beyond projections for the event. To be sure, Rosen denied at  
26 trial that Peter Paul ever complained to him about spiraling costs. And it is also true that some of

<sup>40</sup> See David Rosen testimony, Rosen Trial Transcript at 71-72 (May 25, 2005)

<sup>41</sup> See *id.* at 73

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1 the witnesses who testified and spoke to the Commission about conversations with Rosen have  
2 been subject to sanction for unrelated criminal conduct that nonetheless must be considered in  
3 evaluating their credibility. At the same time, the accounts provided by these various other  
4 witnesses – and others – are not merely consistent, but quite detailed, and there is no apparent  
5 reason why Paul, Tonken and others would not want Rosen to know just how expensive the event  
6 was becoming. Therefore, it is appropriate to give this testimony weight.

7 According to Peter Paul and other witnesses, Paul continually pointed out to Rosen that the  
8 costs of the event were rising above what he (Paul) had initially agreed to pay. From July 30  
9 through August 18, 2000, Rosen stayed in Los Angeles full time to organize and oversee the joint  
10 fundraising event. His office at Stan Lee Media was on the same floor as Paul's. Paul claimed  
11 that he complained to Rosen when Rosen told him about the increasing costs of the event, and that  
12 Rosen replied, "If you back out, I will blame you." Rosen denied that Paul ever voiced concerns  
13 about rising expenses:

14 Q: [D]id [Paul] raise his voice and complain to you or anyone in his office about spiraling  
15 costs with a furor and anger that this was getting out of control?

16 A: No, Sir.

17 Q: Are you sure about that?

18 A: I'm positive.<sup>42</sup>

19 Several witnesses support Paul's version, recalling that the pair had numerous, often  
20 contentious discussions about escalating costs in the days leading up to the event. For example,  
21 Levin testified that Paul was "very adamant in displaying his disgust" to Rosen about event costs

<sup>42</sup> See *id* at 150 (May 24, 2005)

1 getting "out of control," and that Rosen responded that "all the blame would rest on" Paul if Paul  
2 stopped paying.<sup>43</sup>

3 Aaron Tonken's account is consistent with Paul's and Levin's versions of events. Tonken  
4 stated in an interview that Paul would frequently "scream" at him and Rosen about rising event  
5 costs. And finally, Patricia Waters, while not specifically quoting Paul as complaining to Rosen  
6 other than at the July 16, 2000 meeting at Paul's home, stated in an interview, "I may have been [at  
7 Paul's office] ten times in the two weeks before the event, and perhaps during nine or ten of those  
8 times Paul was complaining about costs. I recall seeing Rosen about half the time during those  
9 visits."

10 Paul also claimed that Rosen would make statements such as "I don't want to know what  
11 it's costing." Tonken recalled that when he informed Rosen that the real cost of the event  
12 exceeded \$1 million, Rosen responded that, if questioned about the matter, he "would say that  
13 Peter Paul never told him the real cost of the event." Paul and Levin claim that Rosen would have  
14 learned of the escalating costs not only from Paul's complaints, but also as a result of seeing Paul  
15 write numerous checks to pay for additional expenses.<sup>44</sup> During the ten-day period before the  
16 event, while Rosen was attending to the details of the event with Paul and Tonken, Paul wrote

<sup>43</sup> See James Levin testimony, Rosen Trial Transcript at 150-54 (May 12, 2005). Stephen Gordon, then-Chief Financial Officer of Stan Lee Media, reportedly provided a similar account

By Gordon's recollection, [Peter] Paul, his face "beet red," cornered Hillary Clinton's national finance director, David Rosen, who was organizing the gala from an office in Stan Lee Media's Encino headquarters. In a rage over the mounting costs, "he was swearing at Rosen," Gordon remembered. Gordon said that Rosen answered "Guess what, Peter. If you don't come up with the money, we'll just call it off."

Michael Cieply and James Bates, *Money, Politics and the Undoing of Stan Lee Media*, LOS ANGELES TIMES (July 20, 2003). In August 2003, Gordon was sentenced to six and a half years in federal prison following convictions on charges of wire and bank fraud for writing bad checks to buy Stan Lee Media stock

<sup>44</sup> Brett Nock also testified that Rosen was aware of and concerned about escalating costs. See Brett Nock testimony, Rosen Trial Transcript at 118-19 (May 18, 2005)

1 numerous checks to the vendors, totaling over \$600,000 Paul's claim that Rosen witnessed him  
2 writing these checks is supported by Levin's testimony

3 Q: Did you have occasion to be at Stan Lee Media's offices when Peter Paul was writing  
4 large checks in front of you?

5 A: Yes.

6 Q: And on any of those occasions was Mr. Rosen present?

7 A: Yes.

8 Q: And can you tell us if Mr. Paul – how he would typically do this in your presence or  
9 why he was doing this in his presence.

10 A: Mr. Paul was very flamboyant and very gregarious and over the top. So when he had to  
11 do something, he wanted it to be a theatrical performance. It wasn't as simple as somebody  
12 coming in and just writing a check and handing it to them. It was with – it was part of a  
13 performance where: ["I told you I'm not doing this. This is another check for [\$]20,000  
14 or [\$]50,000, and I can't believe I have to do this."] And there was much fanfare that  
15 came along with it and threats . . ."<sup>45</sup>

16  
17 Rosen testified that Paul and Tonken concealed the costs of the event from him, but could  
18 not offer any explanation for such behavior: "And if there was underreporting – and I see now it's  
19 the case that there was – that these costs were hidden from me; and I can't imagine why, but they  
20 were hidden from me by Peter Paul and Aaron Tonken."<sup>46</sup> Levin testified that Rosen planned to  
21 underreport event costs "because they were too high."<sup>47</sup> More specifically, Levin recalled that  
22 Rosen feared that if the event "was a huge failure . . . he could be fired."<sup>48</sup> Levin recounted that,  
23 during a walk-through just before the event, Rosen told him that "the cost of the event will never  
24 be the cost of the event' . . . meaning that we will never admit how much we spent on this event."<sup>49</sup>

<sup>45</sup> See James Levin testimony, Rosen Trial Transcript at 167-68 (May 12, 2005)

<sup>46</sup> See David Rosen testimony, Rosen Trial Transcript at 188 (May 24, 2005)

<sup>47</sup> *Id* at 165

<sup>48</sup> See James Levin testimony, Rosen Trial Transcript at 159-61 (May 12, 2005)

<sup>49</sup> *Id* at 167

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1 Finally, regardless of Rosen's knowledge or conduct around the time of the event,  
2 NYS 2000 likely became aware of the scope of actual in-kind contributions through press reports  
3 following the event<sup>50</sup> and ultimately through Peter Paul's complaint.<sup>51</sup> To date, NYS 2000 has not  
4 amended the reports at issue.

5 **D. Conclusion**

6 The investigation has revealed the various ways in which NYS 2000's representatives  
7 carried out their responsibilities and roles, resulting in the acceptance of and failure to report  
8 substantial in-kind contributions. Most significantly, NYS 2000 representatives were aware of  
9 many of the event particulars and soaring costs, and that overall spending for the event exceeded  
10 the reported figures. Cost information from the vendors and payors was readily available to  
11 NYS 2000; the investigation has uncovered no evidence that any vendors or individuals involved  
12 in planning, producing and paying for the event prevented Rosen, Burns, treasurer Grossman or  
13 anyone else with NYS 2000 from obtaining accurate cost information. As noted *supra*, the lavish  
14 event was planned and executed in a very short time frame, and the costs appear to have rapidly  
15 escalated during the period that Rosen was working on the event in Los Angeles out of Stan Lee  
16 Media's offices. Rosen appears to have been present when the high concert costs were discussed;  
17 a few witnesses recounted that Rosen himself told them that such costs were at least \$500,000, a  
18 much higher figure than disclosed by NYS 2000. In addition, several witnesses provided detailed

<sup>50</sup> For example, shortly after the event, and two months before the deadline of the FEC report at issue, Clinton campaign spokesman Howard Wolfson indicated in the Washington Post that NYS 2000 received a \$1 million in-kind contribution in connection with the event Lloyd Grove ("The Reliable Source"), *Jerry Springer Drops in on 'A Silly Show'*, WASHINGTON POST (Aug. 17, 2000). The article stated, "As for the rest of the estimated \$1 million-plus cost, [Mr. Wolfson stated that] 'it was an in-kind contribution and not a check.'" As stated *supra*, only \$300,000 of Black Ink's costs were disclosed by NYS 2000.

<sup>51</sup> The complaint's attachments (over 150 pages) included specific documentation of payments in connection with the event, such as copies of numerous signed checks from Black Ink to the concert sub-vendors, totaling over \$600,000. The name of the account printed on these checks is the same name of the event, "Hollywood Tribute to Pres Clinton." The attachments included bank statements showing that these checks had cleared; the statements also listed large deposits corresponding with checks written to Black Ink by Paul.

1 testimony regarding Paul's complaints about spiraling costs in Rosen's presence. Even if Rosen  
2 was not aware of specific costs, there appears to be no dispute that NYS 2000 assigned him the  
3 responsibility to collect accurate cost information and transmit that information to Whitney Burns,  
4 who relied on it to prepare NYS 2000's reports.

5 In addition to claiming that all the budget figures originated with Nock, Rosen alleged that  
6 Peter Paul and Aaron Tonken, for reasons unknown to him, deliberately concealed event costs  
7 from him. However, Paul and Tonken both appear to have been motivated to keep Rosen  
8 informed about the level of their financial assistance, which lends credibility to their assertions  
9 regarding Rosen's knowledge. Tonken, who paid several vendors from an account funded by  
10 entities or accounts controlled by Paul, may have wanted to make sure Rosen was aware of all  
11 such financial support because he was hoping to curry favor with the candidate, Hillary Clinton.  
12 Tonken stated in an interview that "I told David Rosen about every cost, and kept asking him, did  
13 you tell Hillary. . . . I wanted to show [Hillary Clinton] what I was doing for her." Paul claimed  
14 that his goal was to enlist Bill Clinton's post-presidency involvement with Stan Lee Media;  
15 accordingly, he may have been similarly motivated to keep Rosen – and by extension, the Clintons  
16 – apprised of the nature and extent of his financial sponsorship of the event. Of perhaps twenty or  
17 more witnesses who had dealings with Paul or Tonken in connection with the August 12, 2000  
18 event, none gave any indication that the pair tried to keep costs secret or sought to downplay their  
19 financial support; in fact, quite the opposite appears to have been the case.<sup>52</sup>

20 We recognize that some of the witnesses interviewed by Commission staff have been  
21 convicted on fraud charges in connection with other activities or, as in the case of Levin and  
22 Reggie, may have testified at Rosen's trial as part of their plea agreements in unrelated cases.

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<sup>52</sup> See, e.g., Pat Waters testimony, Rosen Trial Transcript at 75 (May 18, 2005)

1 However, their accounts of dealings with Rosen in connection with this matter have been  
2 corroborated by other witnesses with no apparent motive to provide inaccurate or untruthful  
3 information. We do not rely on the testimony or statements of a single witness; rather, the  
4 consistency of accounts provided by multiple witnesses suggests that NYS 2000 was aware of the  
5 high event costs.

6 Therefore, this Office is prepared to recommend that the Commission find probable cause  
7 to believe that NYS 2000 and its treasurer violated 2 U.S.C. § 434(b) and 11 C.F.R.  
8 § 102.17(c)(8)(i)(A).

9 **IV. RECOMMENDATION**

10 Find probable cause to believe that New York Senate 2000 and Andrew Grossman, in his  
11 official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R.  
12 § 102.17(c)(8)(i)(A).

13  
14  
15  
16 7/5/05  
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